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Observations of the Czech Republic

Case C-362/14*

Document lodged by:

Ministry of Foreign Affairs, Czech Republic

Usual name of the case:

Schrems

Date lodged:

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Ministerstvo zahraničních věcí České republiky

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WRITTEN OBSERVATIONS

submitted in accordance with Article 23 of the Protocol on the Statute of the Court of Justice of the European Union by the

CZECH REPUBLIC

represented by Mr Martin Smolek and Mr Jiří Vláčil

in **Case C-362/14**

Schrems

concerning a request for a preliminary ruling submitted to the Court of Justice on the basis of Article 267 of the Treaty on the Functioning of the European Union by the *High Court of Ireland* on 25 July 2014.

* Language of the case: English.

The Czech Republic submits the following written observations on the abovementioned case:

1 Factual context of the case and proceedings before the national court

- 1 For the details of the case the Czech Republic refers to the text of the order for reference.

2 Relevant provisions of national and EU law

- 2 The Czech Republic refers to the relevant provisions of national and EU law set out in the order for reference.

3 The question referred to the Court of Justice for a preliminary ruling

- 3 The following question was referred to the Court of Justice for a preliminary ruling:

Whether in the course of determining a complaint which has been made to an independent office holder who has been vested by statute with the functions of administering and enforcing data protection legislation that personal data is being transferred to another third country (in this case, the United States of America) the laws and practices of which, it is claimed, do not contain adequate protections for the data subject, that office holder is absolutely bound by the Community finding to the contrary contained in Commission Decision of 26 July 2000 (2000/520/EC) having regard to Article 7, Article 8 and Article 47 of the Charter of Fundamental Rights of the European Union (2000/C 364/01), the provisions of Article 25(6) of Directive 95/46/EC notwithstanding? Or, alternatively, may and/or must the office holder conduct his or her own investigation of the matter in the light of factual developments in the meantime since that Commission Decision was first published?

4 Position of the Czech Republic on the question referred for a preliminary ruling

4.1. Introductory remark

- 4 By the question submitted the referring court asks whether Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data ('the Directive') must be interpreted as meaning that an independent office holder entrusted with the protection of personal data is absolutely bound by a decision of the Commission that a particular third country ensures an adequate level of protection of personal data.

5 The referring court is thus asking for an interpretation of those provisions of the Directive which determine the attitude of the Member States to the transfer of personal data to third countries. In its observations the Czech Republic will therefore deal only with the question of interpretation. Should the Court of Justice none the less have it in mind to address also the question of the validity of those provisions, which the referring court is not raising, the Czech Republic would consider it appropriate to reopen the written part of the procedure, so that the Member States and other parties have an opportunity of making observations on this aspect.

4.2. The question referred

6 The decision on the transfer of personal data to third countries is regulated by Article 25 of the Directive. The basic rule is that personal data may be transferred to a third country only in so far as that third country ensures an adequate level of protection of personal data (Article 25(1) of the Directive). When deciding on the transfer of personal data to the specific third country, however, three situations may arise.

7 **First**, the Commission has decided with respect to the third country concerned that it ensures an adequate level of protection. That decision is binding on the Member States, so that they cannot block the transfer of personal data to that third country (Article 25(6) of the Directive).

8 **Secondly**, the Commission has decided that the third country concerned does not ensure an adequate level of protection. That decision is binding on the Member States, so that they must ensure that personal data will not be transferred to that third country (Article 25(4) of the Directive).

9 **Thirdly**, the Commission has not issued either a positive or a negative decision within the meaning of points 7 and 8 of these observations with respect to the third country concerned. In such a case it is for the Member State to assess whether or not that third country ensures an adequate level of protection (Article 25(2) of the Directive).

10 It is therefore clear that if, with respect to a particular third country, the Commission has adopted a positive or negative decision on the adequate level of protection of personal data, the Member States may no longer decide on that question themselves and are required to respect the Commission's assessment.

11 Moreover, the Commission decision concerned is a binding source of Union law within the meaning of Article 288 of the Treaty on the Functioning of the European Union, directed to all the Member States.¹

¹ See Article 6 of Commission Decision 2000/520/EC.

12 If, then, a body of a Member State has doubts as to the material correctness of such a decision of the Commission, it cannot decide itself that the third country concerned does not provide an adequate level of protection. That body may only inform the Commission of its findings (Article 25(3) of the Directive), so that it can reassess its decision if need be.

5 The answer which the Czech Republic proposes to the Court of Justice

Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data must be interpreted as meaning that an independent office holder entrusted with the protection of personal data is absolutely bound by a decision of the Commission that a particular third country ensures an adequate level of protection of personal data.

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Martin Smolek

Jiří Vláčil

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